



46TH ANNUAL INDIANA CONSORTIUM

of

STATE AND LOCAL HUMAN RIGHTS AGENCIES CONFERENCE

PRESENTED *by:*



CUTTING THROUGH THE LEGALIZE: DEMYSTIFYING THE ADMINISTRATIVE FORUM

Speaker: Caroline A. Stephens Ryker

DISCLAIMER

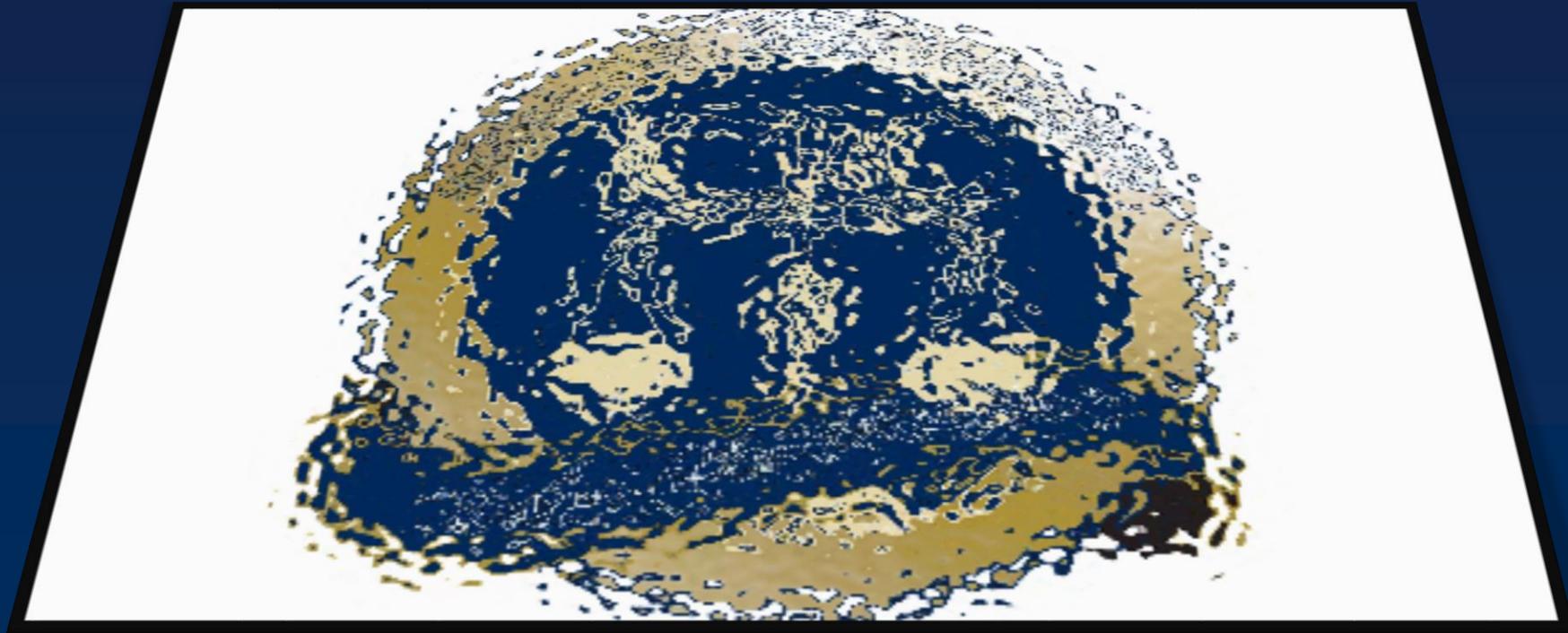
- I am not providing legal advice
- This training is for educational purposes only
- For further guidance on these legal issues, please consult an attorney
- This training does not represent the policies of the Indiana Civil Rights Commission

TRAINING GOAL

To give attendees the confidence needed to advocate for an outcome before the Indiana Civil Rights Commission in any stage of the proceeding in the administrative forum.

AGENCY OVERVIEW

Not so long ago, in a state not so far away....



STATUTORY MISSION: IC 22-9-1-2



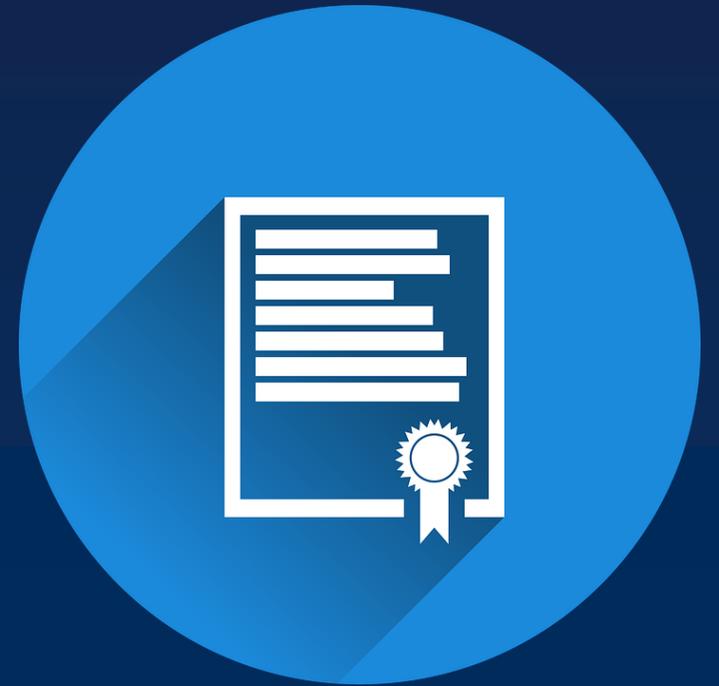
INDIANA CIVIL RIGHTS COMMISSION

- State Agency
- Enforces State Law: Indiana Fair Housing Act and Indiana Civil Rights Law
- Fair Housing Assistance Program: Substantially Equivalent
- Fair Employment Practices Agencies Program: Substantially Equivalent



INDIANA CIVIL RIGHTS LAW

- Creates civil rights
- Sets forth the State of Indiana's public policy



INDIANA FAIR HOUSING ACT

- Administered by the Indiana Civil Rights Commission
- Includes housing discrimination
- Adds familial status



TWIN MISSIONS

Eliminate Discrimination on the basis of:

- Race
- Religion
- Color
- Sex
- Disability
- National origin
- Ancestry
- Familial status (housing)
- Veteran Status (employment)
- Age (Department of Labor)

in education, employment, real estate/housing, public accommodations, and credit

Protect individuals from unfounded claims of discrimination





NO AUTHORITY
OUTSIDE OF THE LAW

IN SUM...

The Indiana Civil Rights Commission's mission is the **neutral** investigation of complaints with the goal of **eliminating discrimination** based on protected classes in protected areas through the **litigation of founded claims** of discrimination.



MISSION COMPONENTS

Intake

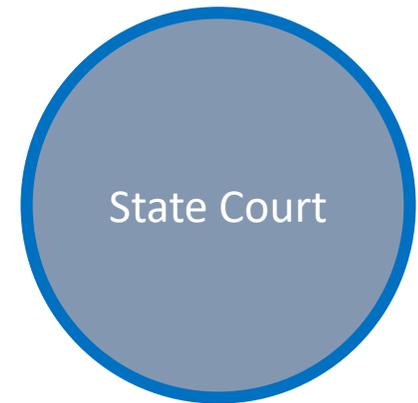
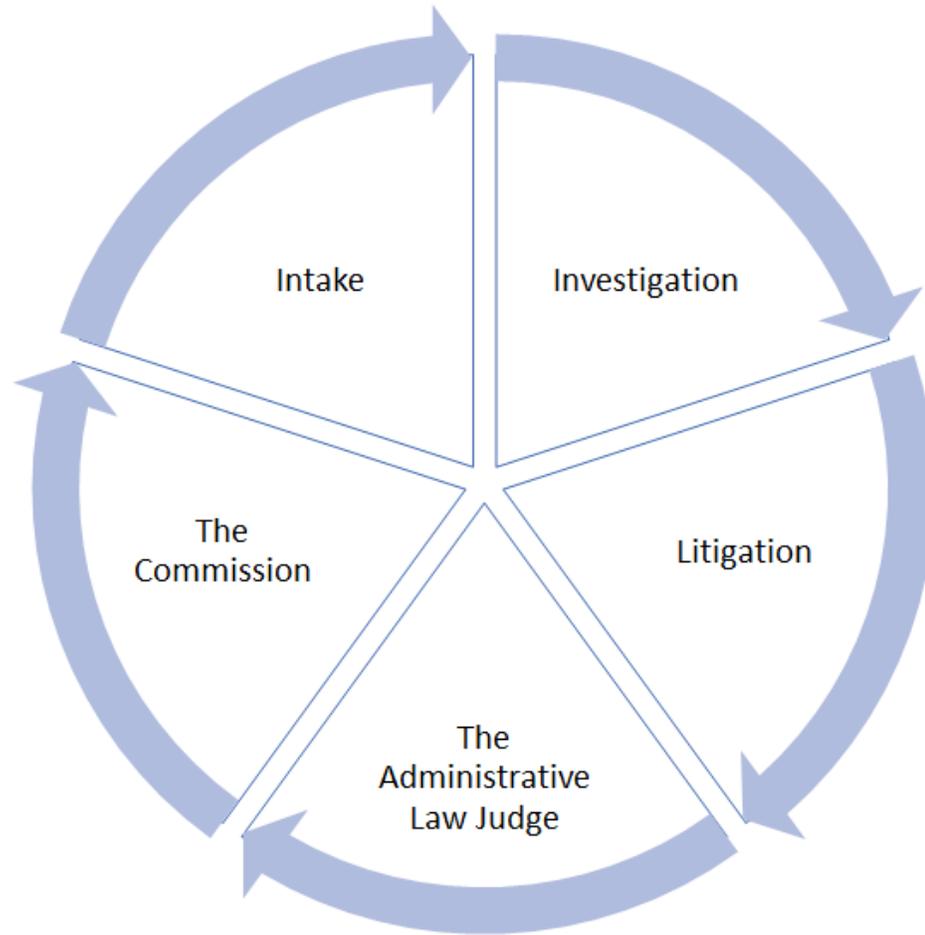
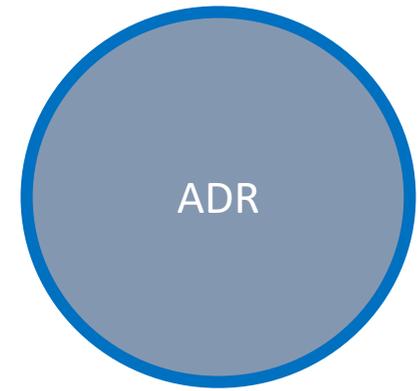
Investigation

Mediation and
Alternative Dispute
Resolution

Litigation

Enforcement

Education



INDIANA CIVIL RIGHTS COMMISSION

BOUNDARIES OF STATE LAW

- Indiana Civil Rights Act
 - Indiana Code 22-9-1-4 creates the Commission
 - Indiana Code 22-9-1-6 outlines the Commission's powers
- Indiana Fair Housing Act
 - Indiana Code 22-9.5-4-1 authorizes the Commission to administer the Indiana Fair Housing Act
 - Indiana Code 22-9.5-4-3 states Commission's powers
- The Indiana Administrative Code
 - 910 IAC 1: Practice and Procedure Before the Commission
 - 910 IAC 2: Fair Housing Complaints
 - 910 IAC 3: Entitled Employment Discrimination Against Disabled Persons
- Indiana Administrative Orders and Procedures Act

APPLICATION

Indiana Civil Rights
Law Substance

Indiana Fair Housing
Act Substance

Indiana Administrative
Code Substance
(chapter 1, 2 and 3)

Indiana Fair Housing Act Procedure

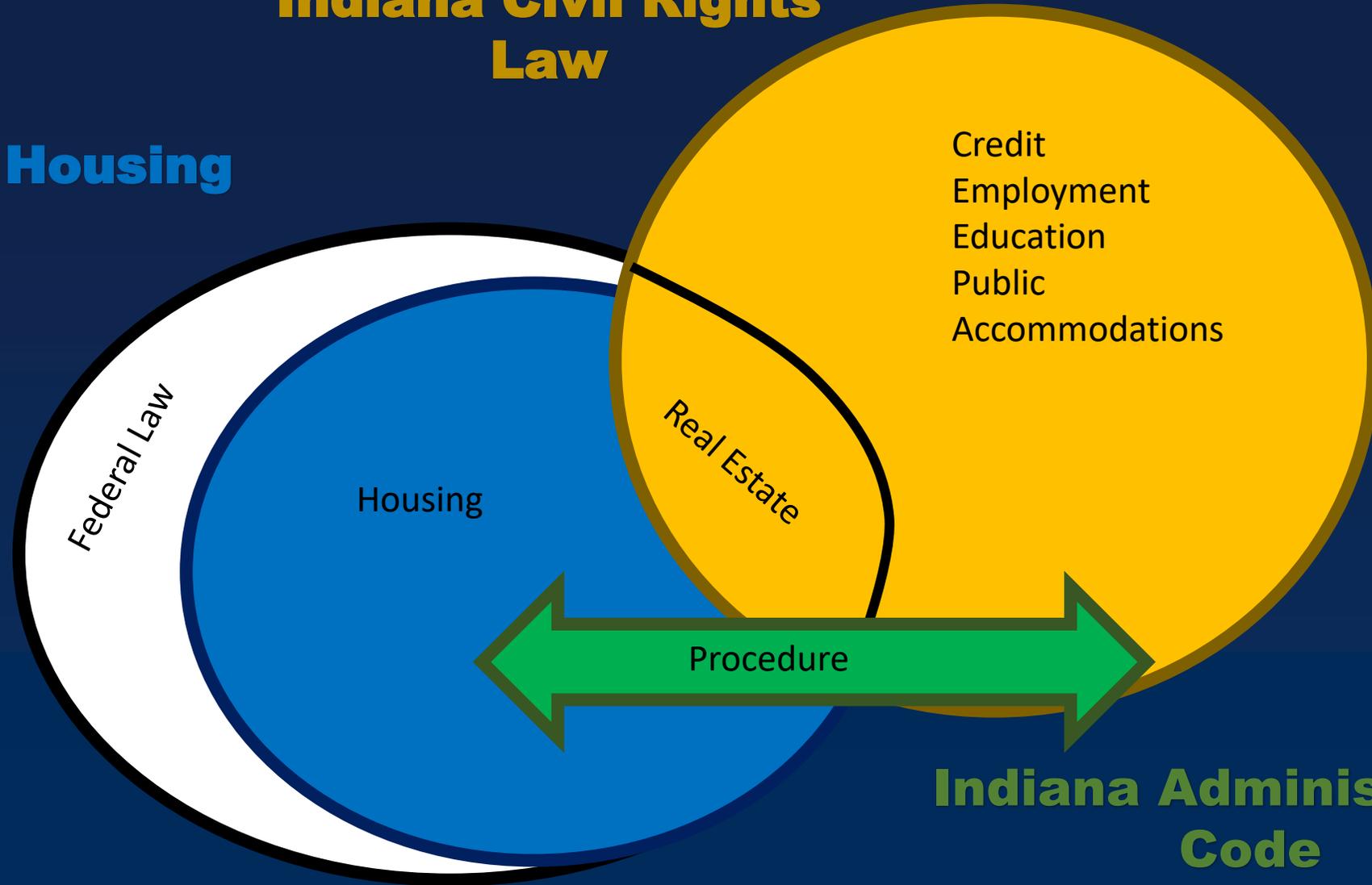
Indiana
Administrative Code
(chapter 2) Procedure

Indiana Civil Rights Law and Indiana
Administrative Code (chapter 1) Procedure

Application

Indiana Civil Rights Law

Indiana Fair Housing Act



Indiana Administrative Code

EXAMPLES:

- Indiana Civil Rights Law covers housing and real estate. It makes no exceptions for certain types of property. The Indiana Fair Housing Act makes several exceptions for certain types of property.
 - Can you file a complaint under the ICRL?
 - Can you file a complaint under the IFHA?
- The Indiana Civil Rights Law allows the ICRC to appoint an ALJ. The Indiana Fair Housing Act does not mention the power to appoint an ALJ. Can an ALJ decide a complaint under the Indiana Fair Housing Act?
- The Indiana Fair Housing Act protects familial status. The Indiana Civil Rights Law does not.
 - Can you file a complaint under the ICRL?
 - Can you file a complaint under the IFHA?

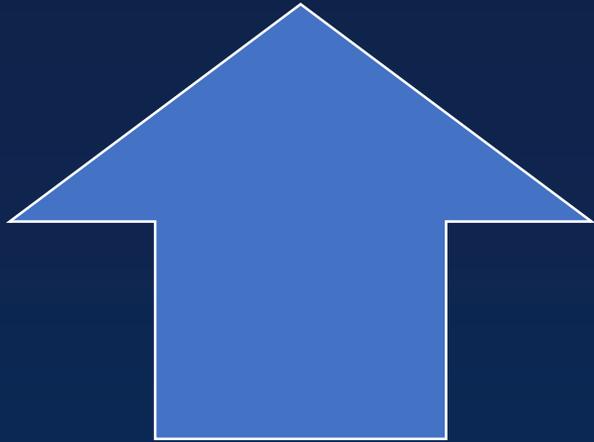
RECENT DECISION

ICRC (Shannon) v. Pedcor Properties: Commission considered the relationship between the two laws and determined that the laws are **procedurally interrelated**, confirming past practice. The case involved a familial status claim, which illustrated a distinction between the two laws substantively.

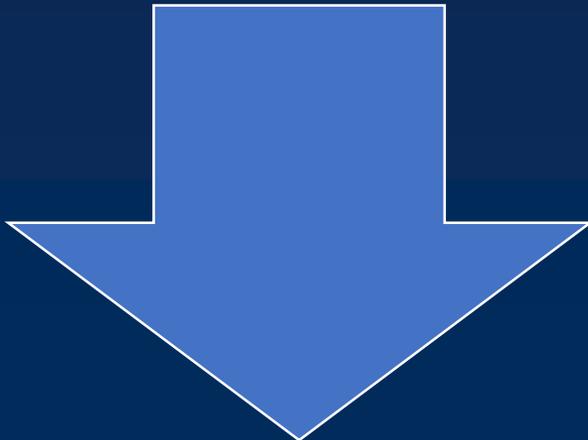
BOUNDARIES OF FEDERAL LAW

- Federal Law-Fair Housing Assistance Program (FHAP)
 - Fair Housing Law Only
 - Substantially equivalent to the Federal Fair Housing Act
- Fair Employment Practices Agencies (FEPA)
 - Employment Law Only
 - Substantially equivalent to Title VII of the 1964 Civil Rights Law

JURISDICTION



ICRC brings cases under Indiana Law



Federal Agencies bring cases under Federal Law

CASE MANAGEMENT



Investigation



Dispute Resolution



Litigation

INVESTIGATION



COMPLAINT

- Call, walk-in, or online
- Must be signed
- Statute of limitations:
 - Fair Housing Act (IC 22-9.5-6-1): One year
 - Indiana Civil Rights Act (IC 22-9-1-3(p)(5)): 180 Days



ANSWER

- Relief: no answer necessary if relief is granted to the Complainant within 20 days after service of Notice of Complaint
- Indiana Civil Rights Law: 20 days
 - Must deny or admit the allegations
 - Must be written and signed
- Indiana Fair Housing Act: 10 days
 - Must deny or admit the allegations
 - Must be written, signed, and include “I declare under penalty of perjury that the foregoing is true and correct.”



PROCEDURAL TIPS

- Know which laws apply
- Motion for a More Definite Statement
- Extensions can be granted for “good cause.”
- Complaints and Answers can be amended during the investigation
- Default applies to investigations
- Early mediation can resolve the case in its entirety



INTERVIEWS



Procedural Tips

- Stay in contact with the investigator
- Read all of the materials submitted / ask for documents in advance
- Provide the big picture

REQUESTS FOR DOCUMENTATION

- Provide all documents requested in a timely manner
- Investigation IS NOT litigation
- Keep all relevant documents
- Investigators are not litigators: help them understand the story



INVESTIGATION GENERALLY

- Clearly identify and describe the nexus
- Include all relevant protected categories and protected areas
- Consider affected/implicated organizations or individuals
- Respond to all allegations raised based on the relevant law
- Assert all available defenses
- Completely tell your story
- **STAY IN CONTACT**



An always remember...

INVESTIGATION IS NOT LITIGATION

NOTICE OF FINDING

- Laws are at issue
- Finding on each specific legal allegation
- Finding on each specific defense raised
- Relevant facts
- Legal rights and obligations



NOTICE OF FINDING

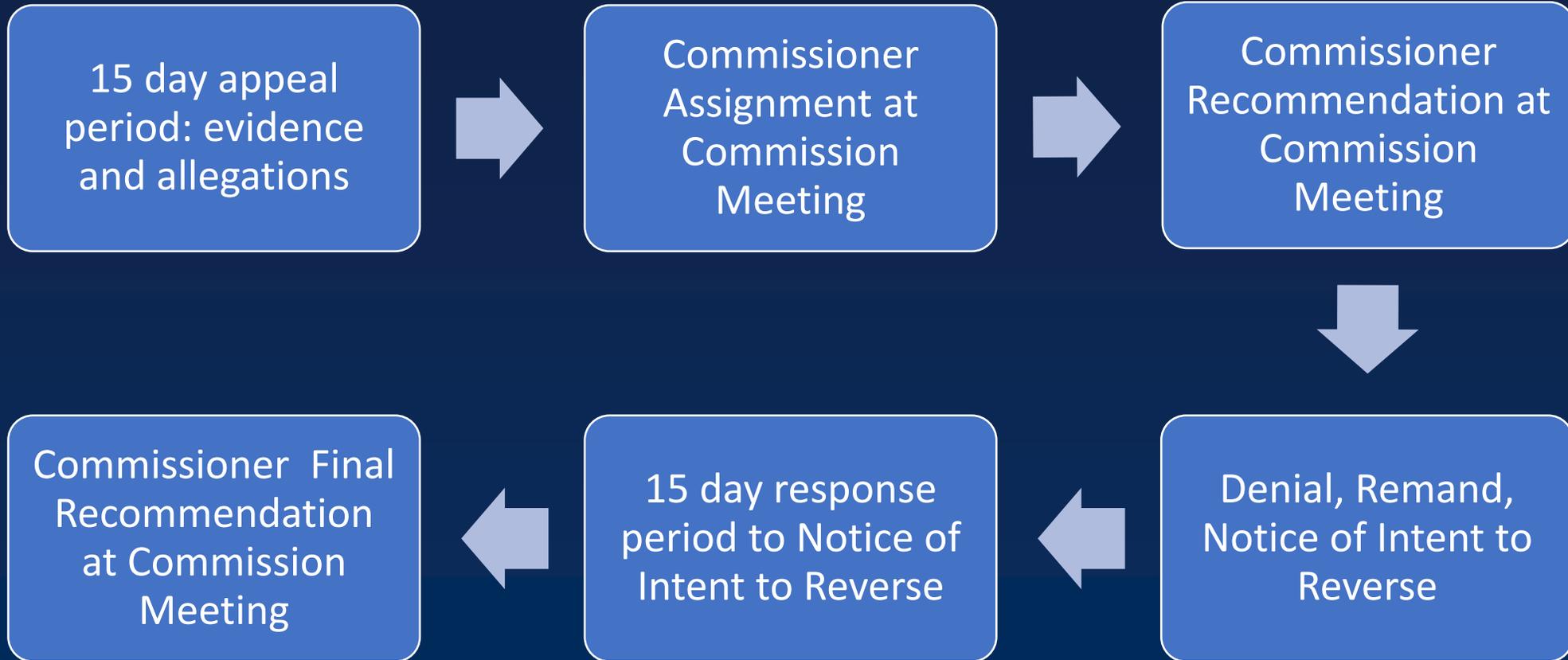
What it is...

- A representation of the claims the Indiana Civil Rights Commission will litigate
- A general notice concerning rights and obligations
- A complaint for purposes of the Administrative Forum

What it is not...

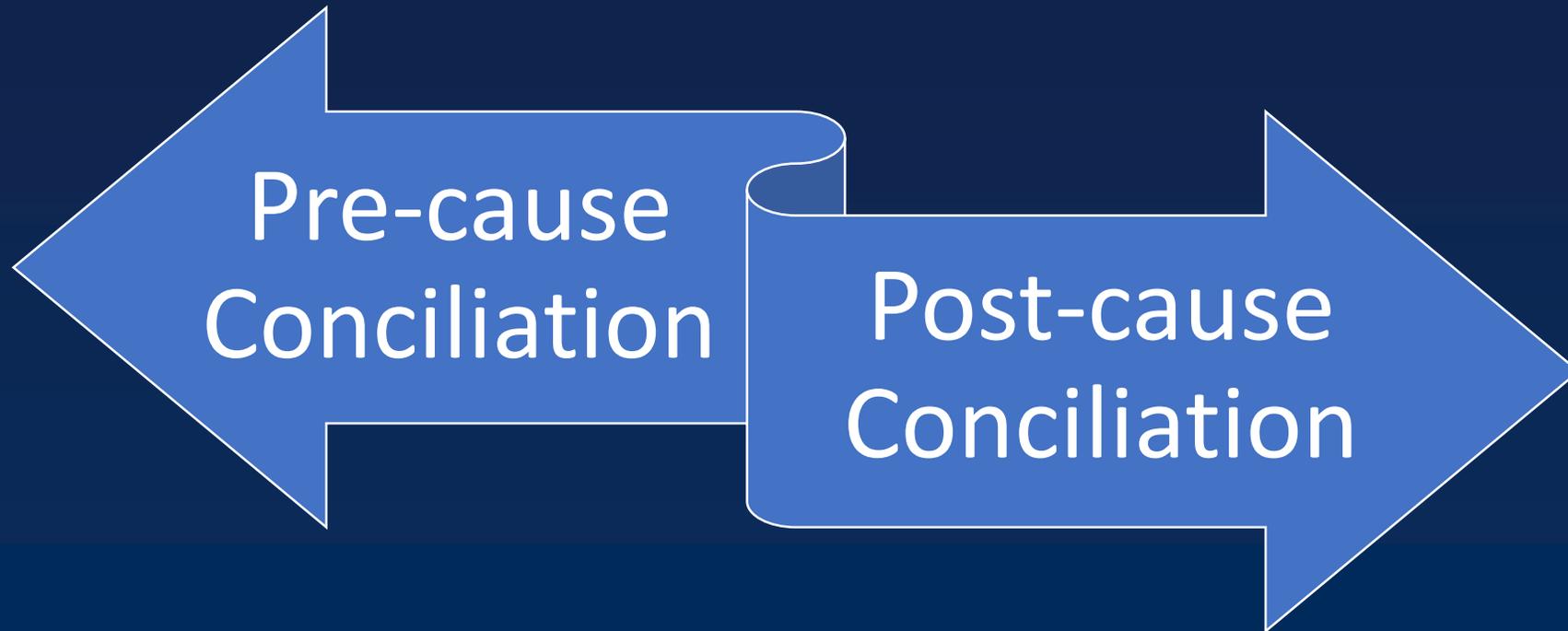
- Legal advice
- A complete overview of all facts found by the investigator
- A legal writing compiled by the attorney on the case
- An offer letter

APPEALS OF NO CAUSE FINDINGS



Commission meetings are open to the public and agendas are posted in advance of each meeting.

DISPUTE RESOLUTION



ALTERNATIVE DISPUTE RESOLUTION

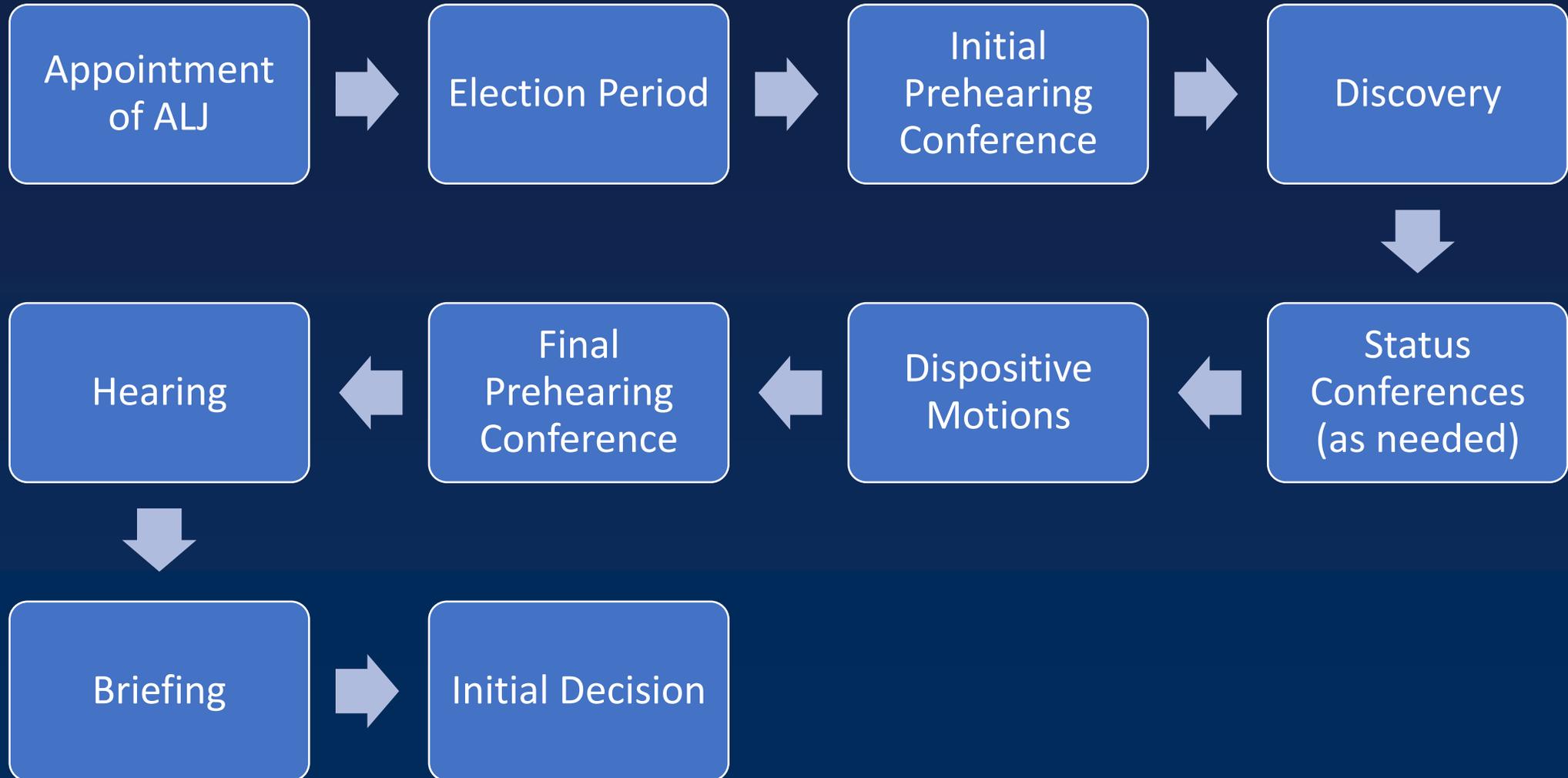
- Pre-Cause:

- Attempt to mediate and resolve the complaint **before** the Indiana Civil Rights Commission makes a finding.
- Mediation between the aggrieved party who filed the complaint and the respondent

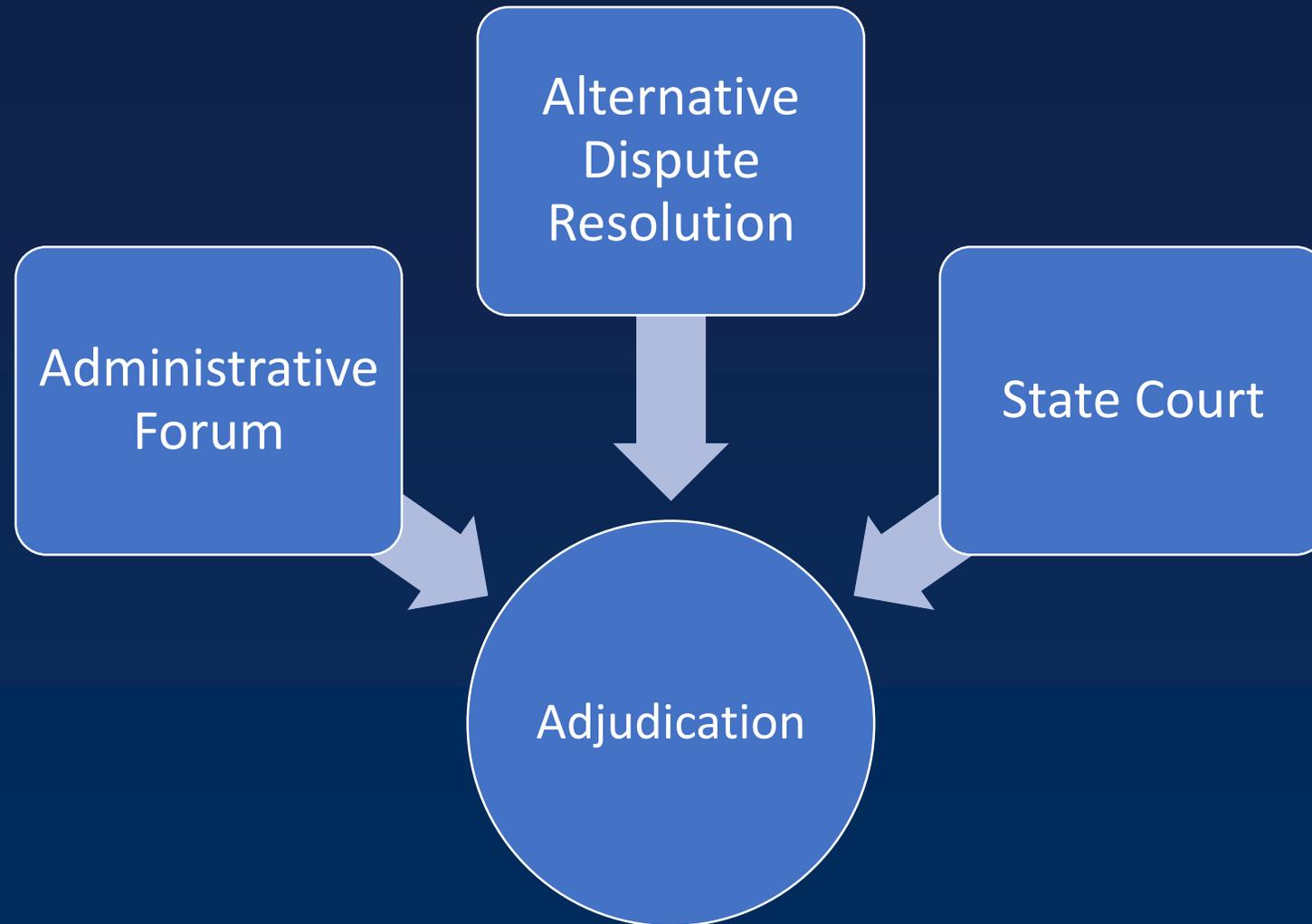
- Post-Cause

- Attempt to mediate and resolve the complaint **after** the Indiana Civil Rights Commission makes a finding.
- Mediation between the aggrieved party, the Indiana Civil Rights Commission, and the respondent
- Affirmative Relief

LITIGATION: PHASE ONE



ELECTION



ADMINISTRATIVE FORUM

- Case proceeds before an ALJ → NO JURY
- A decision will not be issued on the same day as the hearing
- Less formal than state court or federal court
- No filing fees
- ALJ travels to the parties
- Motion practice still occurs
- Two Decision Makers: ALJ and Commission

TIMELINE



State Court

- In 2013, the average length of a court case based in a tort action was 16 months (national)
- In 2013, 75% of cases were closed after one year (national)

Statistics: Civil Justice Initiative, Landscape of Civil Litigation in State Courts, 2015

Administrative Forum

- Fair housing hearing must be held at or near 120 days from the Notice of Finding
- Fewer cases on ALJ docket
- Note: each case is unique and can present challenges that extend that estimate

910 IAC 2-7-1

PROCEDURE

State Court

- Indiana Trial Rules apply
- Indiana Rules of Evidence Apply

Administrative Forum

- Indiana Administrative Procedure Applies
- Indiana Administrative Orders and Procedures Act Applies



CASE STRUCTURE

State Court

- Jury Trial or Bench Trial
- File a Complaint to commence case

Administrative Forum

- Indiana Civil Rights Commission's Administrative Law Judge
- Notice of Finding opens the case



MOTIONS PRACTICE

State Court

- Motions: allowed
- Discovery: Indiana Trial Rules
- Mediation can be ordered



Administrative Forum

- Motions: allowed
- Discovery: Indiana Trial Rules imported through IAC
- Mediation can be ordered
- Pre-hearing briefing of legal issues allowed

REMEDIES

State Court

- actual damages
- punitive damages
- attorney's fees
- court costs
- affirmative relief
- Injunctions and restraining orders

Administrative Law Judge

- “restore” losses
- Actual damages (including Emotional Distress for cases other than employment cases)
- Civil penalties (housing only)
- Attorney's fees (housing only)
- Court costs (housing only)
- Injunctive and equitable relief
- Notification of other state agencies

REMEDIES

State Court

- punitive damages: proportionality

Fair Hous. Ctr. of Cent. Indiana, Inc. v. Smitley, No. 1:16-CV-880-WTL-DML, 2018 WL 3237860, at *2 (S.D. Ind. July 3, 2018)

- Actual Damages: \$25,000.00
- Punitive Damages: \$50,000.00

Administrative Law Judge

- civil penalties: 1st offense is capped at \$10,000.00

ICRC (Meyer) v. Zender,

- Actual Damages: \$1,710.00
- Emotional Distress: \$13,290.00
- Civil Penalty: \$5,000.00

BEFORE MAKING AN ELECTION...

READ THE NOTICE OF FINDING

1. Probable Cause
2. Reasonable Cause
3. Probable and Reasonable Cause



THE PROCEEDURE IS DIFFERENT IN EACH INSTANCE!

REASONABLE CAUSE

NOTICE OF ELECTION: IC 22-9.5-6-12

- Must be made within 20 calendar days after receiving Notice of Finding (if Complainant, 20 days after signature)
- Must send in actual, written notice to the Administrative Law Judge
- Administrative Code requires service on Docket Clerk, Director of the Indiana Civil Rights Commission, Relevant Attorneys, and Respondent/Aggrieved Party

PROBABLE CAUSE

NOTICE OF ELECTION: IC 22-9-1-6

- Must be made before hearing begins on a form provided by the Commission
- Parties both must agree to the State Court Forum
- Must send in actual, written notice to the Administrative Law Judge
- All Parties must be served

REASONABLE AND PROBABLE CAUSE NOTICE OF ELECTION

- BOTH procedural requirements must be met to remove the entire case.
- If only one party elects, the probable cause case stays in the administrative forum
- Probable Cause election does not need to be done at the same time as the Reasonable Cause election
- **Litigation in two forums**

ADMINISTRATIVE FORUM

- All attorneys must file an appearance
- In Indiana Fair Housing Cases, Respondent's must file a **SECOND** Answer or Notice of Finding allegations are deemed admitted.
- Contact ICRC Staff Attorney as soon as possible
- Appointment of Administrative Law Judge and Notice of Initial Prehearing Conference (typically 3-5 days)



INITIAL PREHEARING CONFERENCE

- Telephonic
- Failure to attend can result in default
- Discuss case management
- Discuss settlement possibilities
- Provide outline of each Party's litigation positions
- Limit and narrow issues as possible: briefing as needed



CONSIDERATIONS

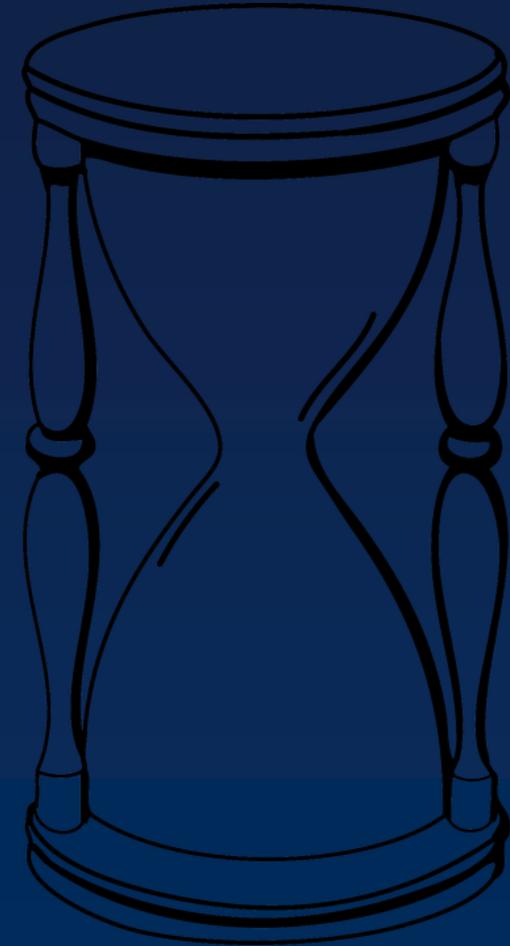
- Likelihood of mediation/settlement: include in schedule?
- Length of discovery period
- Closure type: Notice of Withdrawal v. Stipulation of Dismissal
- Need for Dispositive Motions
- Intervention



CASE MANAGEMENT

****EVERY CASE IS DIFFERENT**

- Discovery is generally 90 days
- Dispositive Motions are generally 120 days
 - 30 days Response
 - 15 days for Reply
 - 15 days Surreply
- Hearing date set in alternative to Dispositive Motion
- Mediation can be ordered, and it will change these deadlines



STATUS CONFERENCES

- Held by request of Parties or if case is stagnant
- Issue specific
- Telephonic



FINAL PREHEARING CONFERENCE

- Submit a Joint Prehearing Statement summarizing issues, defenses, witnesses, and exhibits (Conference of Attorneys 10 days prior)
- Discuss Hearing date, location, and practicalities
- Consider all exhibits and witnesses
- Consider organization of Hearing
- Telephonic



Ask questions!

LITIGATION TIPS

- Ask for what you need
- Do not engage in ex parte communications
- The Docket Clerk
- Obtain investigation records
- Use unique features: 1) briefing, 2) mediation, 3) public records, and 4) administrative rules
- Speed dependent on Parties



NOTICE OF HEARING

- Must be served 15 days in advance of the Hearing
- Hearings conducted near the Parties
- Open to the public
- Hearings are less formal in nature: described in Notice of Hearing

HEARING FORMAT



EVIDENCE SUBMISSIONS

- Rules of evidence do not apply
- Evidence can be submitted without the use of testimony: Party's should have completely discussed purpose and use of evidence during Conference of Attorneys
- Discovery requests/responses can be admitted



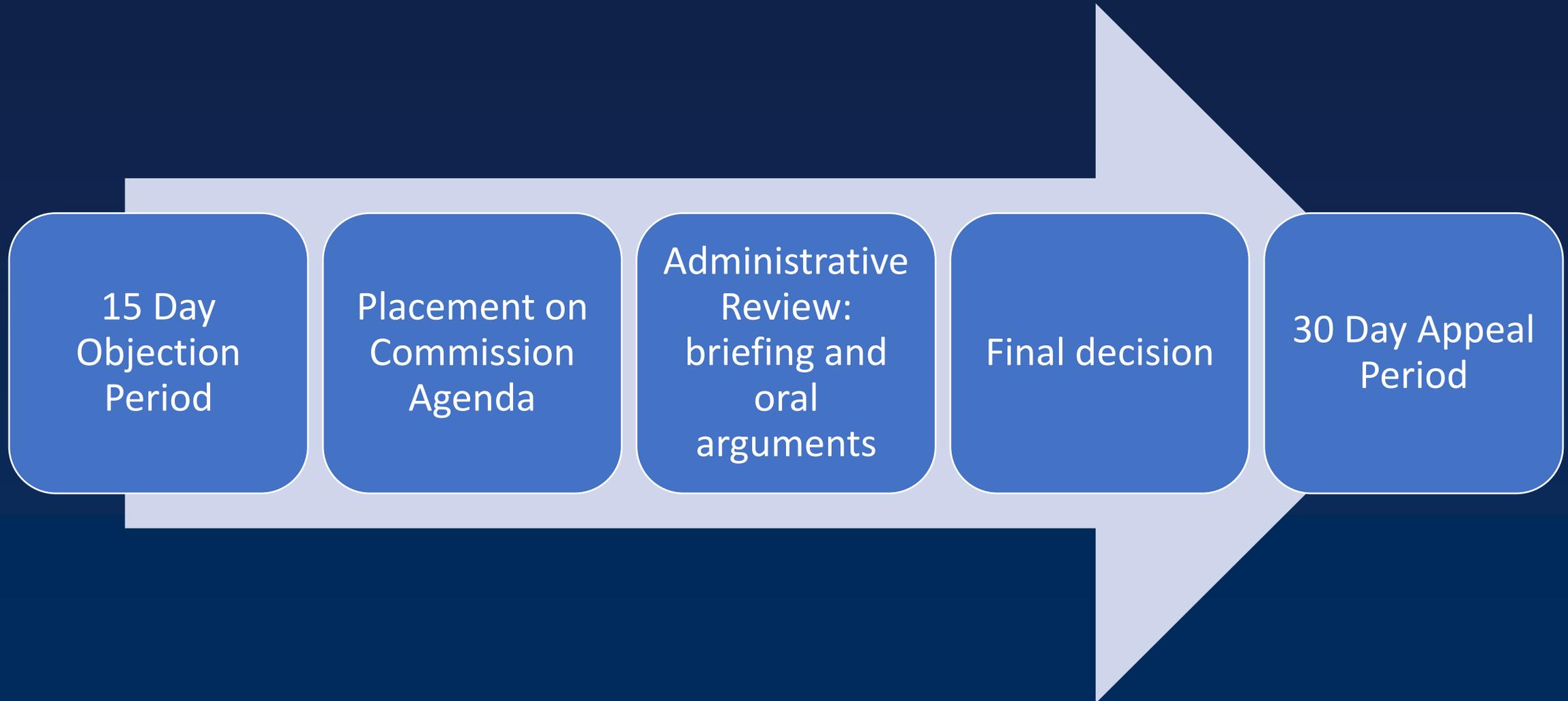
QUIRKS

- ALJ can ask questions of the witnesses during the Hearing
- Opening and closing statement can be waived
- Post-Hearing briefing can be ordered
- Post-Hearing submission of suggested decisions can be ordered

ALJ DECISION: INITIAL DECISION

- ALJ is not the final decision-maker
- ALJ has 90 days to make a decision from a qualifying event: 1) Motion to Dismiss, 2) Motion for Summary Judgment, 3) Completion of a Record by hearing or briefing.
- 90 days can be extended by agreement of the Parties; ALJ can be disqualified for failure to timely rule on the matter

LITIGATION: PHASE TWO



ADMINISTRATIVE REVIEW

- Written, specific objections must be filed within 15 days
- Commission may affirm, remand, or modify an Initial Decision
- Closing Procedure: One to Five Months
 - One: Initial Decision (and objections) on agenda
 - Two: briefing period allowed for objections
 - Three: oral argument on objections
 - Four/Five: decision
- Commission has 60 days from the last event (briefing or oral argument) to make a final decision
- A Final Decision can be appealed to the Indiana Court of Appeals within 30 days

MOST COMMON MISTAKES

- Failure to read and adhere to the Indiana Administrative Code
- Failure to argue the correct law or legal standard
- Incorrect service
- Failure to file an answer or an appearance



MOST UNDERUSED BENEFITS

- Speed
- Briefing legal issues in advance of a hearing
- Intervention
- Supplemental Pleadings/Amendments



THANK YOU

